

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LITHUANIA**

R U L I N G

On the compliance of Article 2 of the Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" with the Constitution of the Republic of Lithuania

20 June 1995, Vilnius

The Constitutional Court of the Republic of Lithuania, composed from Justices of the Constitutional Court Algirdas Gailiūnas, Kęstutis Lapinskas, Zigmas Levickis, Vladas Pavilionis, Pranas Vytautas Rasimavičius, Stasys Stačiokas, Teodora Staugaitienė, Stasys Šedbaras and Juozas Žilys, the secretary of the hearing - Rolanda Stimbirytė, representatives of the party concerned - Pranciškus Vitkevičius, member of the Seimas of the Republic of Lithuania, and Ričardas Piličiauskas, Advisor to the State and Law Committee of the Seimas of the Republic of Lithuania, representatives of the Seimas,

pursuant to Part 1 of Article 102 of the Constitution of the Republic of Lithuania and Part 1 of Article 1 of the Law on the Constitutional Court of the Republic of Lithuania, in its public hearing of 7 June 1995 conducted the investigation of Case No 25/94 subsequent to the petition submitted to the Court by Vilkaviškis District Court requesting to investigate if provision of Article 2 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership to the Existing Real Property" establishing that the rights of ownership to the existing real property shall be restored to the citizen of Lithuania, who is "a permanent resident of the Republic of Lithuania", is in compliance with the Constitution of the Republic of Lithuania.

The Constitutional Court  
has established:

I

The petitioner - Vilkaviškis District Court - requests the Constitutional Court to investigate if Article 2 of the Republic of Lithuania Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property", 18 June 1991, (Official Gazette "Valstybės žinios", No.21-545, 1991; No.3-40, 7-155, 11-278, 15-405, 1992; No.5-83, 32-725, 1993; No.7-100, 14-229, 1994) of which it is determined, that citizens of the Republic of Lithuania seeking to restore the right of ownership to the existing real property, shall be permanently residing in Lithuania, does not contradict Articles 18, 23 and 32 and Part 1 of Article 47 of the Constitution.

The Court grounds its request on the fact that it is established in Article 18 of the Constitution that individual's right to ownership shall be natural, and thus, inviolable, as stipulated in Article 23 of the Constitution, and protected by law. Implementation of these rights is not related to the choice of the place of residence by the citizen of the Republic of Lithuania. Moreover, Article 32 of the Constitution applies no restrictions on the citizen's of Lithuania right to freely

choose his place of residence.

The petitioner, on the basis of these arguments, requests the Constitutional Court to resolve if this requirement of permanent residence on the territory of Lithuania set forth in Article 2 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" for the citizens of the Republic of Lithuania seeking to restore and to protect their rights of ownership which had been violated previously does not contradict the Constitution.

## II

The representatives of the party concerned, the Seimas, have explained during the preliminary investigation of the case, that upon the restoration of the independent state of Lithuania it was not possible to adopt a law which would provide for the unconditional restoration of property that had been seized illegally due to the objective reasons, therefore, such a law was not adopted. The Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" adopted on the 18 June 1991 established not only the procedure for the restoration of the rights of ownership to the property which had been nationalised or otherwise unlawfully socialised, but also the conditions for the restoration of the said rights. One of the main purposes of determining in the Law the necessary conditions which shall be met by persons seeking to restore their rights of ownership to the property which had been nationalised or otherwise unlawfully socialised was protection of the rights of citizens which are not to be blamed for nationalisation or other unlawful socialisation of private property, also inviolability of the interests of society and satisfaction of its needs.

The Seimas representatives maintained that equally important is the fact that under the laws of the USSR (Lithuanian SSR) socialisation of private property had been carried out in two ways: it had been either nationalised or transferred to the ownership of state as ownerless. It therefore sometimes appears problematic to establish due to what reasons the property was lost and socialised afterwards. Provision of Article 2 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" establishing that the right of ownership shall be restored to the citizens of the Republic of Lithuania only permanently residing therein, provided for the possibility to achieve a partial resolution of the said problem. According to the petitioner, this requirement established in the Law did not violate Article 32 of the Constitution, it even provided for the possibility to implement provisions established in this Article entitling the citizens to the right to choose their place of residence in Lithuania and to settle there.

Refusal to meet the conditions prescribed by the Law, i.e. to move to the Republic of Lithuania for permanent residence, should in this case be evaluated as unwillingness to reclaim the property that had been formerly possessed by the right of property ownership from unlawful alien management, since even pursuant to Article 142 of the Civil Code the owner shall have just a right, not obligation, to reclaim his property from unlawful alien management. In pursuit of this purpose he has to meet the requirements prescribed by the Law, i.e. prove that he is the owner of the property, that management of the property

had been terminated without his will etc.

Representatives of the party concerned have also explained that the petitioner's statement, that the disputed "requirement of permanent residence on the Republic of Lithuania for the citizens" is not in compliance with provisions of Articles 18 and 23 of the Constitution, may not be accepted, because the rights of ownership to the property may arise, also, a person may become an owner only in the event when he meets the conditions prescribed by the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property", one of which is that of permanent residence on the Republic of Lithuania. Established in Part 1 of Article 47 of the Constitution is the general provision which entitles the citizens and the State of the Republic of Lithuania to possess land, internal waters, forests, and parks by the right of ownership. However, it does not mean that there may not be certain objectively necessary conditions and even limitations regarding acquisition, management, use and disposal of such property established in laws and pertaining both to the subject and the object of the right of ownership provided such limitations do not infringe upon the constitutional rights of citizen.

### III

In the court hearing, the representatives of the party concerned have also submitted the following additional arguments.

The main institute in the case of dispute is citizenship. Citizenship is a legal relation of citizen to a certain state, and in a legal relation both parties have their rights and obligations. Every state establishes its relations to its people and their rights and obligations. No person may be a citizen of Lithuania and another state at the same time. This is due to the fact that the same individual cannot properly perform his civil obligations to two states. The representatives have maintained that the Law has not deprived the persons who are not permanently residing in Lithuania of the right to the real property either, it has just established certain obligations that must be met by them. Similar requirement of permanent residence on the Republic of Lithuania is set forth even in the Constitution in two cases: in Article 56 it is applied to the candidates for the members of the Seimas and in Article 78 - to the candidates to the President of the Republic. Thus, realisation of special rights may be related to the afore mentioned condition.

In the opinion of the representatives of the party concerned, another significant moment is the fact that a considerable period of time has passed since the nationalisation of the property was begun. Article 46 of the Constitution establishes that the State shall regulate economic activity so that it serves the general welfare of the people. In fact, in a number of cases the property to be returned in kind has not survived, therefore a due compensation should be paid out in such cases which would be done at the expense of other individuals. This would contradict the property interests of the people residing in Lithuania, and, consequently, welfare of the people.

Due to the existence of such concrete circumstances the State therefore had a right to determine the conditions for restoration of the property as are set forth in Article 2 of the Law in dispute.

The Constitutional Court

holds that:

1. In the rulings of the Constitutional Court concerning compliance of provisions of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" (Case No.12/93, 27 May,1995; Case No.11/1993-9/1994, 15 June,1994; Case No.1/94, 15 July, 1994; Case No.10/94, 19 October, 1994; Case No.4/95, 1 June, 1995) it had been ruled that in accordance with this Law a limited restitution is being implemented in Lithuania. In the said rulings also the reasons, conditions and procedure of such restitution are being investigated.

Nationalisation and other unlawful socialisation of property in Lithuania was started by the occupation government more than 50 years ago. Neither the Supreme Council elected by the people in 1990, nor the executive authorities formed by it were responsible for the occupation of Lithuania executed half a century ago and its consequences. Nevertheless, upon the restoration of the independent state and reinstatement of validity of the Constitution of Lithuania of 1939 the steps were taken towards actual restoration of the rights of people of Lithuania which had been violated by the occupation government, as right also originates on the basis of certain norms and imperatives of morality. Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" was one of such steps.

Various solutions to the said problem are possible; for example, a complete restitution, i.e. unconditional restoration of all the property which had been nationalised or otherwise unlawfully socialised or just introduction of a certain compensation for it etc.

The Supreme Council had an unquestionable right to choose a concrete variant of the solution. It has already been indicated, that it had chosen a limited restitution. It should be taken into account that the choice was also predetermined by hard political and social conditions of that period.

All people of Lithuania had suffered from the occupation: both those who had remained in Lithuania and those who had emigrated: their real property if larger above average in amount, securities and bank accounts had been seized from them (by nationalisation or other unlawful ways). However, it should also be noted, that individuals who had remained in Lithuania and other parts of the Soviet Union throughout the occupational period were being subjected to discrimination in that respect that they could not acquire any private property in general. Besides, during the 50 years of occupation, new generations came into existence and new property and other social-economic relations arose which could not be ignored resolving the issues of restitution of the right to property.

Taking into account the said circumstances the Law in dispute is to be evaluated as a compromise solution aimed at elimination of consequences of the occupation in the sector of economic relations and stemming from the necessity to take into consideration the social-economic relations that have been formed in Lithuania. Besides, the adopted Law is to be evaluated also as an act, by promulgation of which attempts were made to return to the economy based on the rights of private ownership and to reconstruct the system of former property relations which had existed before the occupation.

2. The Law in dispute is an ad hoc special legal act, which operates in this particular stage of restoration of the state, i.e. it has a limited validity. Its special legal nature is first of all derived from the fact that it is applied not to all property relations, but only to those which arise on the basis of restoration of the rights of ownership to the existing real property which had been nationalised or otherwise unlawfully socialised during the occupation. Thus, this act has a special subject of regulation. Secondly, it is applied not to all former owners and their descendants who are residents of Lithuania, but only to the former owners of the property - citizens of Lithuania who meet the conditions prescribed by the Law. Upon the death of a former owner, the right of ownership to the existing real property is restored not under the norms of succession law of general nature, but only under a special procedure to the children (or adopted children), parents (or foster parents) and spouse of the former owner. Upon the death of a child (adopted child) of a former owner, the right of ownership to his portion of existing real property shall be restored to his spouse and children (adopted children), provided they are certified citizens in accordance with the Law on Citizenship of the Republic of Lithuania and are permanent residents of the Republic of Lithuania. The ad hoc nature of the Law in dispute in essence also means its relatively terminated and limited application - it is applied only in cases of restoration of the above mentioned rights of ownership during this particular stage of state's existence. This Law helps to restore the rights of ownership which had been violated during the occupation, therefore, there is no legal ground to maintain that this Law in general infringes upon the inborn rights established in Article 18 of the Constitution. Another issue is that due to the afore mentioned circumstances the legislator found no possibilities to apply a complete restitution, i.e. to implement an overall restoration of the rights of ownership that had been violated.

The Constitutional Court notes that until the rights of ownership are restored to the former owners and other persons seeking to restore their rights of ownership to the existing real property in accordance with the conditions and under the procedure prescribed by a special law, the said persons are not considered owners of the property prior to that. Therefore, they do not acquire subjective ownership rights to this property before that (Ruling of the Constitutional Court, 27 May 1994. - Official Gazette "Valstybės žinios", No.42-771, 1994). Thus, norms of the civil law, regulating property relations and protecting rights of ownership may not be applied for the protection of subjective rights of ownership which have not been restored yet, but are the subject of the restoration. It is the special laws that are applied to specific, non traditional situations. When the right of ownership is restored on the basis of such a law, norms of Article 23 of the Constitution and those of the Civil Code are applied in their full scope for protection of the said rights.

3. The method of limited restitution has been chosen as well as conditions and procedure for restitution of the rights of ownership have been determined in order to take into consideration social and legal realities that had changed, and to ensure, that upon restoration of the rights of one group of persons, rights of other persons are not being violated. Such standpoint has been formulated already in the Law "On the Provisional Basic Law of the Republic of Lithuania" adopted by

the Supreme Council on 11 March 1990, in the preamble of which the necessity to bring the provisions of the Constitution of Lithuania of 1938 into accord with changing political, economic and other social relations is stipulated.

The legislator while defining the subjects which are eligible for the restoration of their rights of ownership have chosen clear legal criteria: subjects eligible for restoration of the rights of ownership to the property must possess the citizenship of Lithuania and a document certifying to that and be permanent residents of Lithuania. The Law does not deny the citizens of Lithuania residing abroad the possibility to take part in the process of restoration of the rights of ownership, thus there is no ground to maintain that this group of citizens is subjected to discrimination pertaining to the restoration of the rights of ownership. The Law treats them in the same manner as the citizens of Lithuania residing therein. The same conditions are set forth to all the citizens of Lithuania seeking to restore their rights of ownership to the existing real property. The supposition that harder requirements are applied to the citizens of Lithuania residing abroad is sometimes made on the basis of the fact that they are residing elsewhere. This point of view has been formulated by the petitioner. This is not so in fact. The Law sets forth a condition which can to be met in reality - residence in Lithuania. Moreover, that this possibility is guaranteed by provisions of Parts 3 and 4 of Article 32 of the Constitution:

"A citizen may not be prohibited from returning to Lithuania.

Every Lithuanian person may settle in Lithuania."

The condition pertaining to the restoration of the rights of ownership to the existing real property prescribed by the Law to the citizen of Lithuania and maintaining that he "shall be permanently residing in the Republic of Lithuania", is not of universal, general nature, it is applied only in the implementation of a concrete special right - restoration of the right of ownership to the existing real property. Thus, the citizens may freely choose in this case: either to meet the conditions set forth by the Law and to realise their subjective right to restore the right of ownership to the existing real property, or not realise this specific subjective right. The said condition therefore may not be interpreted as a violation of the principle of equality of citizens or restriction of their freedom to move freely.

Conforming to Article 102 of the Constitution of the Republic of Lithuania as well as Articles 53,54, 55 and 56 of the Law on the Constitutional Court of the Republic of Lithuania, the Constitutional Court of the Republic of Lithuania has taken the following

ruling:

To recognise that provision of Article 2 of the Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" stipulating that the right of ownership to the existing real property is restored to citizen of Lithuania who is "permanently residing in the Republic of Lithuania", does not contradict the Constitution of the Republic of Lithuania.

This Constitutional Court ruling is final and not subject to appeal.

The ruling is promulgated on behalf of the Republic of Lithuania.